

Application Serial No. 09/148,723  
Response to December 16, 2003 Final OA

MI22-981

### REMARKS

A proper 37 C.F.R. §1.116 response to the pending final office action dated December 16, 2003 was filed April 16, 2004. However, as of the date of this filing, a Notice of Allowance has not been received. Accordingly, this request for continued examination is being submitted out of an overabundance of caution to avoid abandonment of this application. This RCE is the same as the §1.116 response (except for this first paragraph), and therefore, meets the requirements of 37 CFR §1.114 including the submission requirements wherein an example is presented as a previously filed amendment after final. MPEP §706.07(h) II.

Claims 1-3, 6, 8, 11, 13, 20, 22, 23, 26, 27, 30, 31, 36, 37, 45 and 48-53 remain in the application. Reconsideration of the application in view of the remarks is requested.

Claims 1, 2, 23, 26, 27, 30, 31, 36, 37, 45, and 48-53 are allowed.

Claims 3, 6, 8, 11, 13, 20, and 22 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6, 8, 12, 18 and 20 of copending U.S. Patent Application Serial No. 10/004,172 and in view of PCT Publication WO 98/12738. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) is enclosed to overcome the provisional obviousness-type double patenting rejection. Accordingly, the double patenting rejection is overcome and should be withdrawn.

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No other rejections are presented against claims 3, 6, 8, 11, 13, 20, and 22, and therefore, such claims are allowable.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to issuance of any such subsequent action.

Respectfully submitted,

Dated: 6-16-04By: 

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